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Administrative Law-Requisites for Full Hearing Delegation of Power

ADMINISTRATIVE LAW—REQUISITES FOR FULL HEARING—DELEGATION OF POWER.—Plaintiff Morgan, doing business as a market agency at the Kansas City Stockyards, challenged the validity of an order issued by the Secretary of Agriculture establishing maximum rates to be charged by the agency, on the ground that a "full hearing" had not been afforded him under the Packers and Stockyards Act.[1] He contended that the hearing did not satisfy the statutory requirement since (1) the Secretary of Agriculture, who promulgated the order, did not hear the evidence as presented or the oral arguments, but merely read parts of the record, (2) he conferred with the Solicitor of the Department and other officials concerning the evidence, and (3) the plaintiff was not advised of the claims of the government. Upon a judgment for the government in the District Court, Morgan prosecuted this appeal. Reversed. *Morgan v. United States* (1938), 304 U. S. 1, 58 S. Ct. 773.

Administrative agencies have become well recognized as a necessity in the proper administration of our government, and the delegation of legislative and judicial power to them[2] is accepted as indispensable. The further delegation of power to subordinates in the department becomes essential to the efficient operation, in fact to any operation of large federal departments. The Morgan case challenges the validity of this practice.

It is a settled principle that an administrative tribunal must grant a "full" or "fair" hearing to comply with due process of law.[3] The application of this principle depends largely upon whether full and fair hearing means full and fair hearing requisite for judicial procedure, or whether fairness without compliance with judicial procedure is adequate. The English doctrine, as expressed in the now famous Arlidge case,[4] holds to the theory that a fair hearing before an administrative tribunal need not conform to the standards of judicial fair hearing and thus that a delegation to a subordinate to hear evidence is proper. This same procedural method has been followed in many of our departments and upheld by the United States courts. In cases dealing with the question of a fair hearing before a multiple department head, the delegation to a single member of the administrative tribunal,[5] or to a sub-

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[1] The Packers and Stockyards Act, 42 Stat. 159, 166; 7 U. S. C. A. No. 211, provides: "Sec. 310. Whenever after a full hearing upon a complaint made as provided in section 309 or after full hearing made by the Secretary on his own initiative, the Secretary—(a) May determine and prescribe what will be the just and reasonable rate or charge."

[2] Willis, Three Approaches to Administrative Law: The Judicial, The Conceptual and The Functional (1935), I U. of Toronto L. Jl. 53.

[3] The courts interpret "full," "fair," "impartial," "public" and "proper" hearing as being synonymous. See Interstate Commerce Commission v. Louisville and Nashville R. R. (1913), 227 U. S. 88, 91, 33 S. Ct. 185, 186; The New England Divisions Case (1923), 261 U. S. 184, 200, 43 S. Ct. 270, 277.

[4] Local Government Board v. Arlidge, (1915) A. C. 120, 133. Here the board appointed an inspector who held a public inquiry at which evidence was submitted. The inspector made his report to the board and they, after considering the evidence and report, decided the case.

[5] J. W. Kobi v. Federal Trade Commission (1927), 23 F. (2d) 41. See Fletcher, The Interstate Commerce Commission, in GROWTH OF AMERICAN ADMINISTRATIVE LAW (1923) 42, 66.

committee of the tribunal,[6] or to an examiner or investigator[7] has been found by the federal courts to provide a fair hearing. Thus, the courts have balanced the desirability of promoting departmental efficiency against the rights of the party affected by the ruling of the department.[8]

In the first appeal of the Morgan case,[9] the Supreme Court seems to have reversed the former federal rule and refused to apply the Arlidge doctrine because "it relates to a different sort of administrative action." In what respect do the administrative actions differ? In the Arlidge case the responsible head was a board, while in the Morgan case the head was an individual, the Secretary of Agriculture.[10] Earlier federal cases show that this is not a valid distinction for they have held that such a procedural method under an individual department head provided a fair hearing. These cases clearly authorize the department head to delegate the matter of collecting evidence and reporting conclusions thereon,[11] and in this phase of the procedure the Morgan case agrees. The point of departure of the Morgan case from the previous federal rule arises upon the proposition that the Secretary must actually hear oral argument if he has not heard the evidence presented.

The federal rule prior to the Morgan case found expression in *Crane v. Nichols*,[12] which held that hearings conducted by subordinates are deemed to be proceedings of the Postmaster General. The court cited an earlier case[13] which said, "Everyone knows that the Postmaster General in person cannot attend to the innumerable duties of the department." The best expression of the rule and the reason for it is given in *Lewis Publishing Company v. Wyman*,[14] which said, "The statute[15] only authorizes the Postmaster General to grant or revoke these privileges; but as Congress well knew that it would be impossible for the head of any executive department to give a hearing in person to all matters coming before that department, it has authorized the head of each department to prescribe rules and regulations for the conduct of the officers and clerks and the distribution and performance of its business. It is the head of the department who promulgates the conclusions as his own, independent of what the recommendations of his assistant might have been.

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[6] Colyer v. Skeffington (1920), 265 F. 17; Earl & Wilson v. Raymond (1900), 188 Ill. 15, 17.

[7] Hackley-Phelps-Bonnell Co. v. Industrial Commission (1920), 173 Wis. 128, 179 N. W. 590. See Smith, Practice and Procedure Before the Interstate Commerce Commission (1937), 5 Geo. Wash. L. Rev. 404.

[8] Albertsworth, Judicial Review of Administrative Action by the Federal Supreme Court (1921), 35 Harv. L. Rev. 127, 153.

[9] Morgan v. U. S. (1935), 298 U. S. 468, 482, 56 S. Ct. 906, 912. A reversal on that occasion sent the case back to the lower court for further proceedings. It was subsequently appealed to the Supreme Court on different grounds in the instant case.

[10] A warning must here be given against a too close analogy, for the Arlidge case deals with condemnation of property for purposes of public health while the Morgan case deals with fixing rates in competitive practice.

[11] Crane v. Nichols (1924), 1 F. (2d) 33, 35.

[12] Crane v. Nichols (1924), 1 F. (2d) 33, 34.

[13] People's United States Bank v. Gilson (1905), 140 F. 1, 5.

[14] (1907), 152 F. 787, 791.

[15] Section 161, Rev. St. (U. S. Comp. St. 1901, p. 80). The section referred to by the Court applies to all the executive departments including the Department of Agriculture and is not limited to the Post Office Department.

The courts will conclusively presume that the head of the department acted on the testimony submitted to him as fully as if he had been present at the hearing and had not submitted it to one of his assistants."[16]

Thus, the administrative procedure employed by the Secretary of Agriculture in the Morgan case insofar as it relates to the delegation of power "to hear" should have been upheld. The Supreme Court, however, denies the validity of the order on this and two other grounds; if what the Court says is true, namely, "what the statute requires 'relates to substance and not form'," these grounds for reversal are equally untenable. One of these is that the Secretary conferred with members of his staff who were familiar with the evidence. The Court recognizes that evidence may be sifted and analyzed by competent subordinates and it would seem that it would make no difference whether this analysis comes to the Secretary in oral or written form. The other ground is that the plaintiff was not advised of the claims of the government. But the previous order was before him and was part of the record, and this order certainly informed Morgan of the nature of the claims and issues involved.

In conclusion, it may be noted that the effect of the decision in the Morgan case may vary to a great extent the procedural methods employed by administrative agencies. However, in view of the decisions heretofore presented, it would appear that the immediate effect of the decision would be limited to the Department of Agriculture unless recent objections to administrative action cause the court to limit further the governmental agencies. As it now stands, the Secretary may authorize a subordinate to hear the evidence, but he must hear at least the oral argument of the defendant in order to validate an order which he issues. H. M. K.

APPEAL AND ERROR—JURY TRIAL—POWER OF APPELLATE COURT TO REVERSE AND ENTER FINAL JUDGMENT WITHOUT GRANTING A NEW TRIAL.—Plaintiff brought action to recover $1,840 allegedly due on a lease contract as back rent and reconditioning expenses. Defendant answered in general denial and affirmatively pleaded oral modification of the lease and admitted liability for $300, which amount was tendered into court. No motion was made for a directed verdict; the jury found for defendant, and judgment was entered by the trial court against the plaintiff. On appeal to the Supreme Court, the

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16 Cases concerning the Post Office Department are not the only ones which have upheld the complete delegation of conducting hearings to subordinates. De Cambra v. Rogers (1903), 189 U. S. 119, 23 S. Ct. 519 (Orders issued by the Secretary of Interior conclusively presumed to be valid even though all the Secretary did was to sign the order.) Immigration cases, relating to both exclusion (Quon Quon Poy v. Johnson (1927), 273 U. S. 352, 47 S. Ct. 346) and deportation (Vajtauer v. Commissioner of Immigration (1927), 273 U. S. 103, 47 S. Ct. 302), have declared valid orders issued by the Secretary of Labor when all he had was a report from an extra-legal Board of Review. In United States v. Standard Oil Company of California (1937), 20 F. Supp. 427, the court distinguishes the first Morgan case on the basis that the instant case was one dealing with appellate review, but it makes this statement, "Executive officers may rely on the assistance of others. Even where the duty 'to hear' in the first instance is imposed upon the head of a department, the evidence may be heard by others. And the conclusion will none the less be that of the head of the department, provided he adopts it as his own."